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LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS
55th Legislature, 1st Session, 2021

Bill Number	<u>HB128/HJCS/aSEC</u>	Sponsor	<u>HJC</u>
Tracking Number	<u>.218381.5</u>	Committee Referrals	<u>HEC/HJC; SEC/SJC</u>
Short Title	<u>School Personnel Background & Training</u>		
Analyst	<u>Canada</u>	Original Date	<u>1/30/2021</u>
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BILL SUMMARY

Synopsis of the SEC Amendment

The Senate Education Committee amendment to the House Judiciary Committee Substitute for House Bill 128 (HB128/HJCS/aSEC) removes the duty to report to the Children, Youth and Families Department (CYFD) for specific professionals when a child has been subject to physical, emotional, psychological, sexual abuse, or sexual exploitation by an adult other a parent, guardian or custodian that was added to the Children’s Code through the original bill. HB128/HJCS/aSEC adds a duty to report ethical misconduct for school district personnel, a school employee, a contractor or a contractor’s employee to a superintendent or the Public Education Department (PED). The bill requires cross-communication between agencies and if PED finds one of the allegations to be criminal in nature they must report the case to law enforcement. HB128/HJCS/aSEC adds school district personnel throughout the bill to require them to participate in trainings, require them to report ethical misconduct, and allows licensure action against them for not reporting. The bill also changes the required tracking of reports made to PED to be specific to individuals who have been found to have committed ethical misconduct or moral turpitude. The bill also allows PED to take licensure action against an employee for instances of ethical misconduct.

Synopsis of the Original Bill

The House Judiciary Committee Substitute for House Bill 128 (HB128/HJCS) implements recommendations from the PED task force on school ethical misconduct as required by House Memorial 57 passed during the 2019 legislative session. The bill requires prospective school employees, volunteers, and contractors to report their background and work history related to previous ethical or sexual misconduct and requires former employers to share this information with prospective employers. The bill requires all school personnel at public schools to report instances of child abuse and neglect and expands the circumstances of when an official report has to be made. HB128/HJCS amends the School Personnel Act to allow local superintendents and governing authorities for school districts and charter schools to publically disclose termination

decisions and record termination and appeal hearings. The bill requires school personnel, volunteers, and contractors to undergo evidence-based training on reporting of child abuse and neglect, ethical misconduct, and professional responsibilities, among other elements. The bill requires more cross-agency communication among PED, the CYFD, and law enforcement related to instances of child abuse, ethical misconduct, and sexual misconduct. The bill also allows regional educational cooperatives to help school districts investigate allegations of misconduct.

FISCAL IMPACT

The bill does not include an appropriation.

The task force suggested allocating funding to PED to hire additional investigators and PED noted a need for additional investigators, but funding is currently not included in the House Appropriations and Finance Committee Substitute for House Bill 2 (HB2/HAFCS) for this purpose. The bill requires PED to oversee and track ethical misconduct investigations and the department may have to respond to an increase in licensure investigations thus adding to the administrative duties of the department.

It is unclear how the bill will impact the number of potential claims of sexual or ethical misconduct against school employees, volunteers, and contractors, which will impact the potential cost to school districts and charter schools. Increased safeguards related to hiring practices have the potential to decrease the number of claims filed by preventing potential employees, volunteers, and contractors who have a history of child abuse or ethical misconduct from being allowed into the school system. However, increased attention and expansion of reporting and training requirements also has the potential to increase the number of claims filed by exposing more instances of ethical or sexual misconduct by school employees, volunteers, and contractors.

HB128/HJCS/aSEC and HB2/HAFCS does not include additional funding for PED to develop new trainings, even though the bill requires PED to make expanded trainings available in every school. The New Mexico Public School Insurance Authority (NMPSIA) noted during task force meetings that they would be willing to help develop the new trainings and PED could potentially partner with NMPSIA in the development of these trainings. NMPSIA has paid an increasing amount to settle sexual abuse and molestation cases in recent years, which has driven up rates for coverage. NMPSIA reinsures large amounts of risk, but the large losses over the years related to these types of claims has driven up the cost of the rates they are able to secure and premiums have become more expensive for schools districts and charter schools. Between FY18 and FY21, liability risk premiums have increased by an average of 9 percent. It is unclear the impact added training will have on the amount of claims filed. NMPSIA's involvement in the training has the potential to decrease the number of claims by familiarizing school district personnel, school personnel, volunteers, and contractors on the legal definitions of "ethical misconduct" and the consequences of this behavior. The trainings could potentially increase the number of claims by teaching individuals indicators of abuse or inappropriate behavior and professional responsibility.

SUBSTANTIVE ISSUES

Sexual and Ethical Misconduct by School Employees. Research shows that an estimated 10 percent of kindergarten through 12th grade students nationwide will be the victim of sexual abuse from a school employee by the time they graduate from high school. Additionally, it is estimated less than 11 percent of educators nationally will report misconduct by another employee. Since 1987, NMPSIA reported \$80 million in insurance pay-outs associated with claims on improper

touching and also shared they receive an average of 9.5 claims per year from New Mexico public schools covered under NMPSIA.

HB128/HJCS/aSEC defines “ethical misconduct” as:

- Discriminatory practice based on protected classes such as race, age, color, national origin, ethnicity, among others;
- Sexual misconduct or any other sexual offense involving an adult or child, regardless of a child’s enrollment status;
- Fondling a child or student including touching private body parts detailed in the bill; or
- Any other behavior, including licentious, enticing or solicitous behavior, that is reasonably apparent to result in inappropriate sexual contact with a child or student or to induce a child or student into engaging in illegal, immoral or other prohibited behavior.

House Memorial 57. House Memorial 57, passed during the 2019 legislative session, directed PED to convene a task force to identify issues of concern regarding the investigation, reporting, and documentation of ethical misconduct within the public school system. Further, the group was tasked with creating a strategic plan to address these concerns through hiring, training, and reporting practices. The task force was composed of representatives from PED, CYFD, the Attorney General’s Office, and NMPSIA. Organizations that represent education stakeholders also had seats on the task force. The task force finalized their recommendations during the 2020 legislative session. Task force members presented their legislative recommendations to the LESC in December 2020.

Hiring Practices. Current law requires an applicant for employment, a volunteer position, or a contractor in a public school to undergo a Federal Bureau of Investigation (FBI) background check. If prior conduct did not result in a conviction, the background check would not reveal any incidence of wrongdoing during the hiring process. An identified loop hole nationwide, known as “passing the trash,” is when an applicant for school employment who engaged in unethical or criminal behavior in one school district then gains employment through another school after the school provides a recommendation encouraging the employee to leave. The federal Every Students Succeeds Act bans this practice and requires states and school districts to have policies in place that prohibit the “aiding and abetting of sexual abuse.” The task force identified several states including Pennsylvania, Connecticut, Nevada, New Jersey, and Maryland, that have similar problems in hiring practices and in response, these states have passed legislation referred to by some advocacy groups as SESAME laws (“Stop Educator Sex Abuse, Misconduct, and Exploitation”).

Like the SESAME laws passed in other states, the bill requires applicants for employment in a public school, including volunteers and contractors, to provide a list of current and former employers that were schools or where the applicant was in a position that involved unsupervised contact with children. The prospective employer shall contact the former employers the applicant provides to verify that the applicant has not been the subject of a child abuse or ethical misconduct investigation by any employer or law enforcement agency, has not been disciplined within their employment due to allegations of child abuse or ethical misconduct, or has not had a professional license or certification revoked due to these type of allegations. The employer shall disclose the information requested within 30 days of receiving the request. Applicants must also provide a statement addressing all of the same elements during the application process. Although the bill strengthens the hiring process to try to prevent unethical school employees from entering the education system, the bill only applies to new applicants who apply to positions following the effective date and would not be retroactive. The bill also requires prospective applicants to provide

work history for any position involving unsupervised contact with children, posing a challenge for older applicants who may have a long employment history.

HB128/HJCS/aSEC also allows school districts and charter schools to share termination decisions with the public and record proceedings of termination and appeal hearings. Previously, state law banned this practice. This strategy is a similar approach taken by other states through their SESAME laws to address instances of “passing the trash.”

Training. Task force members noted not all school personnel are fully aware of their duties and obligations for reporting potential child abuse. The bill would expand required training programs on the detection and reporting of child abuse and neglect of school employees to include school district personnel, school volunteers, and contractors. The training would also include training on relevant legal and regulatory definitions. The bill also requires PED to update and expand current trainings on child abuse reporting, ethical misconduct, professional responsibilities, sexual abuse and assault, and substance abuse. The bill requires PED to promulgate rules for the administration of the training programs.

During the task force meetings, NMPSIA indicated they would be able to develop a training module for school volunteers. Since 1996, NMPSIA has created trainings in this area and in 2017, NMPSIA developed a boundaries policy and training that was adopted by the New Mexico School Board Association. NMPSIA provides risk insurance to school districts and charter schools that covers sexual misconduct claims. Included in their current offerings, they provide trainings in New Mexico public schools on “identifying a predator” to reduce the number of these claims.

Reporting. The bill amends the School Personnel Act to expand requirements for school boards to track and coordinate reports of child abuse or neglect and ethical misconduct made by school district personnel, school employees, and contractors. The bill also requires school boards to adopt policies to coordinate and track reports of ethical misconduct. Superintendents currently have the responsibility to report to PED felony and misdemeanors involving moral turpitude committed by school employees or a finding of ethical misconduct from their investigations to PED; the bill requires superintendents to report this information to PED for volunteers. The bill requires the department to maintain a list of people who have been convicted of a felony or misdemeanor involving moral turpitude or have been found to have committed ethical misconduct; the list is required to be updated monthly.

HB128/HJCS/aSEC amends the School Personnel Act to create a duty to report ethical misconduct within the public school system. If a school district employee, school employee, contractor or contractor’s employee witnesses ethical misconduct they must immediately report the ethical misconduct to a superintendent or PED. If the misconduct is criminal in nature, the department must immediately report to law enforcement. The recipient of the report is responsible for ensuring prompt investigation of the report. This is similar to current practice where PED, school districts, and law enforcement have to investigate situations related to instances of ethical misconduct, but the bill makes a more clear and comprehensive system around prohibiting ethical misconduct in the public school system.

Individuals in specific occupations, including physicians, law enforcement officers, and others, are required to report when there is reasonable suspicion that a child is abused or neglected to local law enforcement and CYFD. The bill amends the Child Abuse and Neglect Act within the Children’s Code to specify that all school employees are mandatory reporters, expanded from the current definition which includes “a school teacher or a school official.”

Investigations. Task force members voiced concern that some rural school districts might lack capacity to undertake investigations of ethical misconduct and suggested regional educational cooperatives (RECs) may assist school districts in conducting these investigations. The bill would expand a school district superintendent's investigatory capacity to allow RECs to investigate allegations of ethical misconduct of a school employee or volunteer on behalf of a superintendent.

Additionally, the task force suggested that PED should also support school district investigations by providing support through PED's licensure investigators. HB128/HJCS/aSEC allows PED to take licensure action against those who do not report ethical misconduct or have been found to have committed ethical misconduct.

SOURCES OF INFORMATION

- LESC Files
- CYFD

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